

AUSTRALIAN CAPITAL TERRITORY

Building (Amendment) Ordinance (No. 2) 1988

No. 80 of 1988

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated 7 December 1988.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

CLYDE HOLDING
Minister of State for the Arts
and Territories

An Ordinance to amend the *Building Ordinance 1972*

Short title

1. This Ordinance may be cited as the *Building (Amendment) Ordinance (No. 2) 1988*.¹

Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Building Ordinance 1972*.²

Interpretation

3. Section 5 of the Principal Ordinance is amended—

- (a) by inserting after the definition of "approved" in subsection (1) the following definition:

(Ord. 85/88)

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

“ ‘asbestos’ means—

(a) any of the following materials:

- (i) actinolite;
- (ii) amosite;
- (iii) chrysotile;
- (iv) crocidolite;
- (v) erionite;
- (vi) fibrous anthophyllite;
- (vii) tremolite; or

(b) any substance or material containing any of those minerals;”;

(b) by omitting the definition of “building work” in subsection (1) and substituting the following definition:

“ ‘building work’, in relation to a building, means work in connection with—

- (a) the erection, alteration or demolition of the building;
or
- (b) repairs of a structural nature to the building;

and includes—

- (c) the installation of a mechanical ventilation system in the building or the structural modification or removal of such a system installed in the building; and
- (d) the performance of any work in relation to the building that is carried out at the site of the building and involves the handling of asbestos or the disturbance of loose asbestos;”;

(c) by inserting after the definition of “licensee” the following definition:

“ ‘loose asbestos’, in relation to a building, means asbestos that is not securely affixed to the building;”;

(d) by adding at the end the following subsection:

“(5) A reference in this Ordinance to the handling of asbestos shall be read as including a reference to—

- (a) the preparation and processing of asbestos;
- (b) the mixing of asbestos with another substance;
- (c) the installation, repair, modification or removal of—
 - (i) thermal or acoustic insulation;
 - (ii) fireproofing material; or
 - (iii) building material;

that is asbestos;

- (d) treating or securing loose asbestos to prevent it from moving; and
- (e) sealing a cavity in a building, or another part of a building, that contains loose asbestos to prevent movement of the loose asbestos from that cavity or part of the building.”.

Appointment of building inspectors

4. Section 8 of the Principal Ordinance is amended by omitting subsection (2) and substituting the following subsections:

“(2) The Building Controller shall cause to be issued to each building inspector an identity card that specifies the name and appointment of the building inspector and bears a recent photograph of the building inspector.

“(3) A person appointed to be a building inspector shall, upon ceasing to be a building inspector, return his or her identity card to the Building Controller.

“(4) A person who, without reasonable excuse, fails to comply with subsection (3) is guilty of an offence punishable, on conviction, by a fine not exceeding \$100.”.

Inspection

5. Section 9 of the Principal Ordinance is amended by omitting from subsection (8) “Two hundred dollars” and substituting “\$1,000, or imprisonment for a period not exceeding 6 months, or both”.

Insertion

6. After section 9 of the Principal Ordinance the following section is inserted:

Inspection of premises for asbestos

“9A. (1) The Building Controller may, by instrument, authorise a building inspector to inspect a building to determine whether it contains loose asbestos.

“(2) Subject to this section, a building inspector who is authorised to inspect a building under subsection (1) may, at any reasonable time of the day—

- (a) enter upon the land on which the building is situated; and
- (b) inspect the building;

and may, for the purpose of performing the inspection—

- (c) open any cavity in the building, or any part of the building, to determine whether it contains loose asbestos;
- (d) examine or perform tests on any substance that the building inspector finds in or about the building and that he or she suspects, on reasonable grounds, may be loose asbestos; or
- (e) remove from the building, for testing, samples of any substance that the building inspector finds in or about the building and that he or she suspects, on reasonable grounds, may be loose asbestos.

“(3) A building inspector shall not inspect a building under this section unless—

- (a) the Building Controller has caused the occupier of the building to be given a notice in writing not less than 7 days before the day on which the inspection is to take place that states—
 - (i) the purpose of the inspection;
 - (ii) the period within which the inspection is to take place;
 - (iii) the procedure that will be adopted for advising the occupier of the results of the inspection; and
 - (iv) that the building inspector who is to perform the inspection will be carrying an identity card which bears a photograph of the building inspector; and
- (b) on attending at the building to make the inspection, the building inspector endeavours to ascertain whether the occupier is present at the building and, if the building inspector finds that the occupier is present, he or she endeavours to—

- (i) advise the occupier that he or she proposes to inspect the building;
- (ii) advise the occupier of the purpose of the inspection; and
- (iii) show the occupier his or her identity card.

“(4) A notice under paragraph (3) (a) may be given to the occupier of a building by—

- (a) leaving it at the building to be inspected; or
- (b) sending it by post addressed to the occupier at the address of the building to be inspected.

“(5) Where a building inspector requires access to the interior of a building for the purpose of performing an inspection under this section (not being access that may be gained to a roof cavity of the building by lifting or moving roofing material) the building inspector shall make reasonable endeavours to contact the occupier of the building and make arrangements convenient to the occupier and the building inspector for the occupier to give the building inspector the access he or she requires.

“(6) Where a building inspector has contacted the occupier of a building pursuant to subsection (5) and made arrangements of the kind referred to in that subsection, the building inspector may enter the building in accordance with those arrangements for the purpose of performing an inspection under this section.

“(7) Where—

- (a) a building inspector has, pursuant to subsection (5), made reasonable endeavours to contact the occupier of a building to make arrangements of the kind referred to in that subsection but has been unable to—
 - (i) contact the occupier; or
 - (ii) make arrangements of that kind; or
- (b) a building inspector has, pursuant to subsection (5) made arrangements of the kind referred to in that subsection with the occupier of a building but the occupier has refused or failed to give the building inspector access to the interior of the building in accordance with those arrangements;

the Building Controller may, by instrument, authorise the building inspector to gain the access he or she requires to the interior of the building to perform an inspection under this section.

“(8) A building inspector who is authorised to enter a building under subsection (7) may enter the building at any reasonable time of the day with such assistance and with such force as is necessary and reasonable for the purpose of performing an inspection under this section.

“(9) A building inspector who, for the purpose of performing an inspection under this section, gains access to a roof cavity of a building by lifting or moving roofing material shall, as soon as practicable after the completion of his or her inspection of the roof cavity, restore the roof to the condition in which it was immediately prior to the commencement of the inspection.

“(10) A building inspector who gains access to the interior of a building in accordance with arrangements made pursuant to subsection (5) shall—

- (a) cause as little damage as is practicable to the building in the exercise of his or her powers under this section;
- (b) behave courteously to any person he or she encounters in the building;
- (c) respect the rights of privacy of any person using the building; and
- (d) where the building inspector has, in his or her arrangements with the occupier of the building under subsection (5), undertaken to close the building at the completion of the inspection—close the building securely in accordance with those arrangements.

“(11) A building inspector who enters a building by force under subsection (8) shall—

- (a) cause as little damage as is practicable to the building in entering it and in exercising his or her other powers under this section;
- (b) behave courteously to any person he or she encounters in the building;
- (c) respect the rights of privacy of any person using the building; and
- (d) close the building securely on leaving it at the end of the inspection.

“(12) Where a building inspector, in the exercise of his or her powers under this section in relation to a building, causes damage to the building, or the land on which it is situated, the building inspector shall, before departing from the building at the completion of the inspection, leave at the building a report addressed to the occupier of the building giving particulars of the damage so caused.

“(13) A building inspector who inspects a building under this section shall, before departing from the building at the completion of the inspection, leave at the building a report addressed to the occupier of the building that—

- (a) states that the building inspector has not found any substance in or about the building which he or she believes may be loose asbestos; or
- (b) states that the building inspector has found a substance in or about the building which he or she believes may be loose asbestos, that he or she has taken samples of the substance for testing and that the occupier will be promptly advised of the results of the tests when those results become available.

“(14) Where a building inspector removes a sample of a substance from a building for testing under paragraph (2) (e)—

- (a) the building inspector shall promptly arrange for the sample to be tested to determine whether it is asbestos; and
- (b) the Building Controller shall arrange for a written report of the results to be promptly provided to the occupier of the building when the results become available.

“(15) A report under paragraph (14) (b) may be provided to the occupier of a building by—

- (a) leaving it at the building to which it relates; or
- (b) sending it as a letter by post addressed to the occupier at the address of the building to which it relates.

“(16) A building inspector who enters premises to perform an inspection under this section is not authorised to remain on the premises if, on request by the occupier of the premises or a person apparently in charge of the premises, he or she does not show his or her identity card.

“(17) A person who, without reasonable excuse, obstructs or hinders a building inspector acting pursuant to this section is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.”.

Classes of builder’s licences

7. Section 14 of the Principal Ordinance is amended—

- (a) by adding at the end of subsection (2) “other than specialist building work”;
- (b) by omitting from paragraph (3) (a) “or”;

(c) by adding at the end of subsection (3) the following word and paragraph:

“; or (c) specialist building work.”; and

(d) by omitting from subsection (4) all the words after “storey” and substituting the following:

“other than—

(a) building work that involves the use of—

(i) structural beams the maximum of any of the spans of which exceeds 6 metres;

(ii) reinforced concrete beams; or

(iii) suspended reinforced concrete in slabs the maximum of any of the spans of which exceeds 5 metres; or

(b) specialist building work.”.

General requirements for carrying out building work

8. Section 30 of the Principal Ordinance is amended by omitting from subsection (4) all the words after “offence” and substituting the following:

“punishable, on conviction, by a fine not exceeding—

(a) in the case of a natural person—\$2,000; or

(b) in the case of a body corporate—\$10,000.”.

Stages of building work for inspection purposes

9. Section 36 of the Principal Ordinance is amended by adding at the foot of subsection (5) the following penalty:

“Penalty: (a) in the case of a natural person—\$1,000; or

(b) in the case of a body corporate—\$5,000.”.

Stop notices

10. Section 43 of the Principal Ordinance is amended—

(a) by omitting from the end of paragraph (1) (e) “or”; and

(b) by inserting after paragraph (1) (f) the following word and paragraph:

“; or (g) on a building that contains loose asbestos;”.

Notice to carry out building work

11. Section 46 of the Principal Ordinance is amended—

- (a) by omitting from the end of paragraph (1) (e) “or”; and
- (b) by inserting after paragraph (1) (f) the following word and paragraph:
 - “; or (g) a building inspector finds, on inspection, that a building contains loose asbestos.”.

Insertion

12. After Part IV of the Principal Ordinance the following Part is inserted:

“PART IVA—REMOVAL OF LOOSE ASBESTOS**Treatment and removal of loose asbestos by Commonwealth**

“51A. Where a building inspector has found loose asbestos in a building, the Commonwealth may, for the purposes of public health and safety, by its servants, agents or contractors enter the building and—

- (a) treat or secure the loose asbestos to prevent it from moving;
- (b) seal any cavity in the building, or other part of the building, that contains loose asbestos to prevent movement of the loose asbestos from that cavity or part of the building;
- (c) remove the loose asbestos or any part of it; or
- (d) perform any 2 or more of the procedures referred to in paragraphs (a), (b) and (c) at the same time or at different times.

Additional powers of the Commonwealth

“51B. For the purposes of performing work specified in section 51A the Commonwealth may, by its servants, agents or contractors—

- (a) enter the land on which the building is situated;
- (b) on or over that land—
 - (i) construct, build or place any plant, machinery, equipment or goods;
 - (ii) deposit materials or things;
 - (iii) erect sheds or other structures; and
 - (iv) manufacture or work materials of any kind;

- (c) demolish, destroy or remove on or from that land any plant, machinery, equipment, sheds, structures, goods, materials or things constructed, erected, built, placed or deposited on the land under paragraph (b);
- (d) enter the building in which loose asbestos has been found at any reasonable time of the day with such assistance and by such force as is necessary and reasonable;
- (e) in, on or over the building—
 - (i) construct, build or place any machinery, equipment, materials, goods or things;
 - (ii) erect structures;
 - (iii) place coverings; and
 - (iv) manufacture or work materials of any kind;
- (f) demolish, destroy or remove in, on or from the building any machinery, equipment, structures, coverings, goods, materials or things constructed, erected, built or placed in, on or over the building under paragraph (e); and
- (g) open any cavity in the building, or any other part of the building, that the servant, agent or contractor suspects, on reasonable grounds, may contain loose asbestos.

Notice to occupier that work is to be performed

“51C. The Commonwealth shall not perform any work in relation to a building in the exercise of its powers under section 51A unless the Building Controller has caused the occupier of the building to be given, not less than 28 days before the day on which the work is to commence, a notice in writing that—

- (a) describes the work to be performed;
- (b) briefly describes the manner in which it is proposed that the work should be carried out;
- (c) specifies the powers under which the work is to be performed;
- (d) specifies the day on which it is expected that the work will commence;
- (e) specifies the day on which it is expected that the work will be completed;

- (f) where it will be necessary or desirable for those who occupy the building to leave it while the work is being performed—
 - (i) states that it will be necessary or desirable, as the case may be, for the occupants to leave the building during that period;
 - (ii) specifies the day before which the occupants should have vacated the building to enable the work to be carried out; and
 - (iii) specifies the day on which it is expected that the occupants will be able to safely resume occupation of the building; and
- (g) gives the name, business address and telephone number of an officer or employee of the Commonwealth who can give the occupier further information concerning the arrangements for the work.

Service of notices

“51D. A notice under section 51C may be given to the occupier of a building—

- (a) by delivering it to the occupier personally; or
- (b) by sending it by post to the occupier at the address of the building to which it relates.

Notice to owner that work is to be performed

“51E. (1) Where the Building Controller causes a notice under section 51C to be given to the occupier of a building and the occupier is, to the knowledge of the Building Controller, not the owner of the building, the Building Controller shall, at the time of causing the notice to be given to the occupier, cause a copy of the notice to be sent by post to the owner at the address of the owner last known to the Building Controller.

“(2) The Building Controller shall, before causing a notice under section 51C to be given to the occupier of a building, make reasonable enquiries to ascertain—

- (a) the identities of the occupier of the building and the owner of the building; and
- (b) if the Building Controller finds that the owner of the building is not the occupier of the building—the address of the owner of the building.

Entry to building with force

“51F. (1) The Commonwealth shall not by its servant, agents or contractors enter a building by force under section 51B unless the Building

Controller has made reasonable endeavours to contact the occupier of the building and make arrangements convenient to the occupier and the Commonwealth for the occupier to give the Commonwealth access to the building to exercise its powers under sections 51A and 51B without the use of force.

“(2) A servant, agent or contractor of the Commonwealth who enters a building by force under section 51B shall—

- (a) cause as little damage as is practicable in entering the building;
- (b) behave courteously to any person he or she encounters in the building;
and
- (c) close the building securely if he or she leaves it unattended.

Liability of the Commonwealth

“51G. Where the Commonwealth performs work in relation to a building in the exercise of any of its powers under section 51A or 51B it shall not have a liability to any person in respect of—

- (a) any costs or expenses incurred by persons who occupy or use the building for the occupation or use of alternative accommodation while the work is being carried out;
- (b) any costs or expenses incurred by the owner of the building, or those who occupy or use the building, for the cost of cleaning any goods or things (other than carpet and furniture) in or about the building that was made necessary or desirable by the performance of the work by the Commonwealth; or
- (c) any diminution in the value of the building, or the land on which the building is situated, by reason of the building having had loose asbestos in it.

Obstruction of the Commonwealth

“51H. A person shall not, without reasonable excuse, obstruct or hinder the Commonwealth or any other person in the exercise of the Commonwealth’s powers under section 51A or 51B.

Penalty: \$1,000.”.

Statement that permit conditions are met

13. Section 53A of the Principal Ordinance is amended by omitting the penalty set out at the foot of subsection (2) and substituting the following penalty:

“Penalty: (a) in the case of a natural person—\$1,000; or
(b) in the case of a body corporate—\$5,000.”.

Occupation and use of buildings

14. Section 54 of the Principal Ordinance is amended by omitting the penalty set out at the foot of the section and substituting the following penalty:

“Penalty: (a) in the case of a natural person—\$1,000; or
(b) in the case of a body corporate—\$5,000.”.

Use of buildings restricted

15. Section 54A of the Principal Ordinance is amended by omitting the penalty set out at the foot of subsection (1) and substituting the following penalty:

“Penalty: (a) in the case of a natural person—\$1,000; or
(b) in the case of a body corporate—\$5,000.”.

Safe live load plates

16. Section 57 of the Principal Ordinance is amended by omitting the penalty set out at the foot of the section and substituting the following penalty:

“Penalty: (a) in the case of a natural person—\$1,000; or
(b) in the case of a body corporate—\$5,000.”.

Exceeding safe live load

17. Section 58 of the Principal Ordinance is amended by omitting the penalty set out at the foot of the section and substituting the following penalty:

“Penalty: (a) in the case of a natural person—\$2,000; or
(b) in the case of a body corporate—\$10,000.”.

Saving

18. A notice given to the occupier of a building before the commencement of this Ordinance that complies with the requirements of paragraph 9A (3) (a) of the Principal Ordinance as amended by this Ordinance and that was given in the manner prescribed by subsection 9A (4) of the Principal Ordinance as amended by this Ordinance is a valid and effectual notice for the purposes of that paragraph.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 9 December 1988.
2. No. 26, 1972 as amended by Nos. 7 and 38, 1974; Nos. 45 and 61, 1976; No. 46, 1978; No. 30, 1979; Nos. 69, 70 and 71, 1982; Nos. 20 and 66, 1983; No. 68, 1984; Nos. 20 and 47, 1987; Nos. 31 and 73, 1988.